

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 12.11.115 and 12.11.501 and the ) ADOPTION  
adoption of NEW RULE I regarding )  
recreational water use on Lake Five )

TO: All Concerned Persons

1. On March 25, 2010 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-361 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 671 of the 2010 Montana Administrative register, Issue Number 6.

2. The commission has amended the above-stated rules as proposed.

3. The commission has adopted the above-stated rule as proposed: NEW RULE I (12.11.2208).

4. Five people provided verbal comment and one person provided written comment at a public hearing and eight people submitted written comment during the comment period. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses are as follows:

COMMENT #1: Six people were in favor of the proposed amendment and adoption.

RESPONSE #1: The commission appreciates the interest in this rulemaking process.

COMMENT # 2: One person suggested a 50-foot or 100-foot no wake zone instead of completely eliminating the established 200-foot no wake zone.

RESPONSE #2: The Department of Fish, Wildlife and Parks proposed language for rules to the commission as agreed to in a settlement agreement in recognition of concerns expressed about safety on Lake Five with the development of a fishing access site. The commission decided that eliminating the established 200-foot no wake zone is appropriate on Lake Five.

COMMENT #3: Seven people stated they were opposed to the prohibiting of personal watercraft (PWC). Five of these seven people recommended the commission adopt a restriction of the use of PWC from noon to 6 p.m. instead of completely prohibiting their use. Three of the seven people expressed concern that Lake Five would become the only lake in Montana, besides the lakes in Glacier National Park, where PWC would be restricted. Two of the seven people stated PWC were their choice of recreational vehicles for several reasons including

personal preference to PWC and the affordability of PWC in comparison to other boats. One of the seven stated these rules were generated due to an agreement so a fishing access site could be established on Lake Five and stated people use PWC to fish and would be using the fishing access site for its intended purpose. One of the seven stated there is more drinking while operating boats than PWC because it is harder to drink while driving a PWC and banning PWC will increase the risk even more.

RESPONSE #3: As agreed to in a settlement agreement which recognized concerns about safety on Lake Five related to development of a fishing access site, the department agreed to ask the commission to prohibit PWC. The commission does not agree that restricting the time PWC may use the lake will address the safety concerns expressed by some landowners however, the commission understands the concerns of landowners who already own PWC and will not be able to use them, including using PWC for fishing, on Lake Five. The lakes that are restricted in Glacier National Park were instated by the federal government and are outside the authority of the commission and have no bearing on this rulemaking process. The commission is unaware of a higher rate of boating under the influence among boat users than with PWC users and the commission does not agree that the banning of PWC will increase the rate of boating under the influence of alcohol.

COMMENT #4: One person expressed specific safety concerns and enforcement of rules and regulations on Lake Five. The person stated the Department of Fish, Wildlife and Parks is under cost controls causing a shortage of staff and the department will now be required to patrol Lake Five.

RESPONSE #4: The department and commission are always conscientious of possible cost savings and the department has not reduced staff. The department agreed to propose the rule language to the commission in order to provide access to Lake Five and does not have any concerns about enforcing the rules and regulations on the lake.

COMMENT #5: Three people specifically stated their support for the prohibition of PWC.

RESPONSE #5: The commission appreciates the interest in this rulemaking process.

COMMENT #6: Three people express disappointment that they had not received notice of this rulemaking authority or the public hearing.

RESPONSE #6: The staff of the Department of Fish, Wildlife and Parks published notice of the hearing and proposed language on its web site, sent hard copies of the notice to people who asked to receive notice of the department's rulemaking proposals, and published a notice in the area newspaper. The commission regrets the inability to notify everyone that may have an interest in the rulemaking process and encourages persons who wish to receive notice of rulemaking actions proposed

by the commission make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or faxed to the office at (406) 444-7456.

/s/ Bob Ream

Bob Ream, Chairman

Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk, Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State May 17, 2010